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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,986

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Rey Bravo

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LEGAL DEPARTMENT - TP12
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EXAMINER

NEWTON, JARED W

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/820,986

Applicant(s)

BRAVO ET AL.

Examiner

Jared W. Newton

Art Unit

3692

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15, 20-22, 32-37, 40-43, 46-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The claims stand as unpatentable over US patent No. 5,758,003 to Wheeler et al. (hereafter Wheeler) in view of US Patent No. 6,819,857 to Douglas et al. (hereafter Douglas). The remarks filed April 12, 2007 have been considered, but are not persuasive. Applicant asserts that the storage tray of Douglas does not route cables from the front side of the rack to the rear side of the rack (Remarks, page 9). This assertion is not relevant to the combination of Wheeler and Douglas for two reasons: First, a cable is not a part of the claimed invention, and therefore a cited reference or combination of references need not show use with a cable, but need only be capable of supporting a cable in the manner claimed. Second, the Douglas reference is relied upon for its showing of a spool, not for its showing of capability of cable routing, or any other purpose. The Applicant further asserts that "the combination of Douglas and Wheeler produces multiple spools for storing cable slack...one spool 24 adjacent to, but separated from, a trough 18...and another spool 98 on a storage tray 44 that is vertically attached to the outside of a vertical riser of the frame 12..." Indeed, the combination proposed by the Final Rejection mailed December 12, 2006 would produce multiple spools, however the Examiner did not rely on the entire tray 44 of the Douglas reference, but rather its showing of a novel spool that is centrally located on the planar surface that supports it. Wheeler likewise teaches a planar surface, and both references teach the desirability of being able to store loose cable slack. It follows that applying the centrally located spool--and only the centrally located spool--as taught by Douglas to the planar support surface 18 as taught by Wheeler, would provide a means of storing additional cable slack, in situations where the rack supports cable longer than the capacity its current spools, and thus necessitates additional spooling capabilities. This motivation clearly contradicts Applicant's assertion that "no motivation exists to combine the spool 98 of the tray 44 of Douglas with the trough 18 of Wheeler." (Remarks, p. 9). Motivation to combine the references is inherent in providing additional spools, and further motivation can be found for providing the specific spool taught by Douglas--"easier manipulation of the cable slack under the tabs 106 and around the spool 98" (see Douglas, col. 6, lines 41-44)--as set forth in the Final Rejection mailed December 12, 2006. The noted recitation of Douglas provides an answer to Applicant's question of "why (or how) someone of skill in the art would specifically pluck only the storage spool from the vertical storage tray of Douglas and put it on the trough of Wheeler" (Remarks, page 10); they would do so, because cable management is an obvious problem in the art, and Douglas provides a superior spool for managing cable.



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